

Honorable Ricardo S. Martinez

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

PETER J. WHALEN, an individual,

Plaintiff,

v.

NATIONAL OCCUPATIONAL HEALTH  
STRATEGIES, LLC, a Missouri corporation,  
and SCOTT JONES and the marital  
community of SCOTT and JANE DOE  
JONES; LEA ANN SHERIFF and the marital  
community of LEA ANN and JOHN DOE  
SHERIFF; CRAIG HELIGMAN and the  
marital community of CRAIG and JANE  
DOE HELIGMAN,

Defendants.

Case No. 05-0915 RSM

CONFIDENTIALITY AGREEMENT AND  
PROTECTIVE ORDER

The parties have jointly moved for entry of a protective order, whereby Defendants, National Occupational Health Strategies, LLC, Scott Jones and the marital community of Scott and Jane Doe Jones, Lea Ann Sheriff and the marital community of Lea Ann and John Doe Sheriff, Craig Heligman and the marital community of Craig and Jane Doe Heligman, and Plaintiff, Peter Whalen, agree that, during discovery, Defendants, Plaintiff, and their attorneys may be given access to certain confidential employee records, business records, and other confidential information in the possession, custody, or control of the opposing party, and the parties and counsel for the parties receiving that confidential information are to hold such

1 documents and information in confidence, using such information and documents only in  
2 connection with the prosecution of this pending litigation.

3 Federal Rule of Civil Procedure 26(c) provides for the issuance of a protective order  
4 limiting the disclosure and use of information and documents for good cause. Good cause exists  
5 for the issuance of a Confidentiality Agreement and Protective Order here because a majority of  
6 persons associated with this matter move in a relatively small business community and, if the  
7 confidential information described herein was known in the general community, that knowledge  
8 could lead to embarrassment, humiliation, loss of status and reputation, and could, potentially  
9 impact upon certain persons' personal and work relationships.

10 Therefore, in consideration of the parties' Joint Motion for Entry of a Confidentiality  
11 Agreement and Protective Order to protect confidential and proprietary information that may be  
12 produced in connection with Plaintiff's claims and Defendants' defenses, after a review of the  
13 proposed Order and based on good cause shown, it is hereby ORDERED that the Joint Motion  
14 for Entry of a Confidentiality Agreement and Protective Order is GRANTED and the following  
15 Confidentiality Agreement and Protective Order is entered:

16 1. Any documents, limited to the following categories, may be designated as  
17 "Confidential" by the producing party. The categories are:

- 18 (a) Business organization and strategy information;
- 19 (b) Financial information not publicly filed with any federal or state  
20 regulatory authorities, including but not limited to tax returns and  
21 supporting documentation;
- 22 (c) Commercial and proprietary information which has not been disclosed to  
23 the public;
- 24 (d) Personnel information, including but not limited to, any wage and/or  
25 benefits information;
- 26 (e) Confidential customer information; and
- (f) Medical records and/or other medical information.

1           2.     The party claiming a document or information is confidential shall mark  
2 "CONFIDENTIAL" on the face of any document the party believes should be treated as  
3 confidential pursuant to this Order. Each page shall be stamped by the producing party with an  
4 identifying "bates" number.

5           3.     Documents designated as "Confidential" and any copies of such documents and  
6 any information contained in or derived from such documents, shall be made available only to  
7 the following persons when needed by them in connection with their duties in the conduct of this  
8 action:

9                   (a)     Attorneys of record in this litigation, their partners or associate attorneys;

10                  (b)     Any persons employed by such attorneys or their firms, when working in  
11 connection with this litigation under the direct supervision of partners or  
12 associate attorneys of said firms;

13                  (c)     The Court;

14                  (d)     Any mediator or other neutral appointed by the Court or chosen by the  
15 parties;

16                  (e)     Court reporters, videographers, and/or other official personnel reasonably  
17 required for the preparation of transcripts of testimony;

18                  (f)     My current or former officer, employee, agent or subcontractor of the  
19 Defendants;

20                  (g)     All experts and consultants retained by any party for the preparation or  
21 trial of this case, provided that no disclosure shall be made to any expert  
22 or consultant who is employed by a competitor of the producing party;

23                  (h)     Witnesses necessary to the prosecution or defense of the case; and

24                  (i)     Any other person on such terms and conditions as the parties may  
25 mutually agree, or as the Court may hereafter direct by further Order.  
26

1           4.       Except as provided in this Order, no copies of material designated as  
2 “Confidential” shall be made or furnished, and no information contained in such material shall  
3 be disclosed to any person, firm, or corporation except those identified in this Order, without  
4 prior written consent of the party to whom the records belong or their attorneys of record in these  
5 actions. Prior to the disclosure of any material or information designated as “Confidential,” the  
6 attorney making such disclosure shall require such person, firm, or corporation to execute  
7 Exhibit A indicating agreement to be bound by the terms of this Order.

8           5.       Material designated as “Confidential” may be disclosed to deponents other than  
9 those previously listed, during their preparation for, and the taking of, their depositions, provided  
10 that prior to such disclosure the deponent executes Exhibit A indicating agreement to be bound  
11 by the terms of this Order. Such deponent may not divulge any such material or the information  
12 contained in such material to any other person, firm or corporation.

13          6.       This Order does not restrict or limit the use of confidential material at any hearing  
14 or trial.

15          7.       In the event that any party to this litigation disagrees with the designation of any  
16 information as “Confidential” information, the party shall first confer with the other parties as to  
17 whether they will agree to a change. If this fails, either party may seek appropriate relief from  
18 the Court. Exceptions to this Order may be made by unanimous agreement of the parties to it,  
19 and any party may seek relief from the Court. The producing party shall always have the burden  
20 of showing that the materials are confidential and/or proprietary in nature rendering them subject  
21 to this Order. This Order shall be without prejudice to any party to bring before the Court the  
22 issue of whether any particular information is, or is not, confidential.

23          8.       The entire text of any deposition, including exhibits, shall be treated as  
24 confidential under this Order for a period of 30 days following the deposition, during which time  
25 the producing party may determine whether such materials and information shall be marked  
26 confidential. In the event that the producing person or party inadvertently fails to designate  
discovery material as “Confidential” in this or any other litigation, it may make such a

1 designation subsequently by notifying all parties to whom such discovery material was produced,  
2 in writing, as soon as practicable. After receipt of such notification, the parties to whom  
3 production has been made shall treat the designated discovery material as confidential, subject to  
4 their right to dispute such designation in accordance with paragraph 7.

5 9. All parties and counsel for such parties in this litigation shall make a good faith  
6 effort to ensure that their experts, employees and agents comply with this Order. In the event of  
7 a change in counsel, retiring counsel shall fully instruct new counsel of their responsibilities  
8 under this Order.

9 10. The terms of this Order shall survive and remain in effect after the termination of  
10 this litigation. The parties shall take such measure as are necessary and appropriate to prevent  
11 the public disclosure of confidential discovery material, through inadvertence or otherwise, after  
12 the conclusion of this litigation.

13 11. Within thirty (30) days of the termination of this litigation (including any appeals)  
14 or such other time as the producing party may agree in writing, the parties shall return the  
15 confidential discovery material to counsel for the producing party. Outside counsel, however,  
16 shall not be required to return any pretrial or trial records regularly maintained by that counsel in  
17 the ordinary course of business, which records will continue to be maintained confidential in  
18 conformity with this Order.

19 12. Inadvertent production of documents subject to work-product immunity, the  
20 attorney-client privilege or other legal privilege protecting information from discovery shall not  
21 constitute a waiver of the immunity or privilege, provided that the producing party shall  
22 promptly notify the receiving party, in writing, of such inadvertent production.

23 13. The entry of this Order shall be without prejudice to the rights of the parties, or  
24 any one of them, or of any non-party to assert or apply for additional or different protection.

25 14. All parties who review documents subject to the terms of this Order are hereby  
26 bound by the terms of this Order and subject themselves to the jurisdiction of this Court.

1 IT IS SO ORDERED:

2  
3 Date: April \_\_11\_\_, 2006.

4 

5 RICARDO S. MARTINEZ  
6 UNITED STATES DISTRICT JUDGE

7 Agreed as to form,

8 /s/ Garrett R. Ferencz

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18 **ATTORNEYS FOR PLAINTIFF**

19 /s/ Amy M. Fowler

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